

ECS File: JPA-88-91

Project No.: M-784-4(1)

TRACS NO.: 7844 MA MES SS143 01C

Project: Greenfield Rd.

Section: Brown Rd. - McDowell Rd.

Update
116

TERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF MESA

THIS AGREEMENT is entered into 27th February, 1989, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the State) and the CITY OF MESA, acting by and through its CITY COUNCIL (Local Agency).

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. Local Agency is empowered by Arizona Revised Statutes Section 9-240.B.3, and provisions in the City Charter Section 103 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of Local Agency.

3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; rehabilitation and replacement of bridges; elimination of high hazards and removal of roadside obstacles; and highway safety improvements at railroad-highway grade crossings.

4. Such project within the boundary of Local Agency has been selected by Local Agency; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

NO. <u>13665</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>3-2-89</u>
<i>Dion Shumway</i> Secretary of State
By <i>B. Hermillion</i>

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of Local Agency by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. Local Agency, in order to obtain federal funds for the construction of the project, is willing to provide the State with Local Agency funds to match federal funds in the ratio required or as finally fixed and determined by FHWA.

7. The work embraced in this agreement and the estimated cost are as follows: GRADE, DRAIN, AND PAVE, CONSTRUCT CURB, GUTTER AND SIDEWALK.

Estimated Cost		\$3,799,900.00
Federal Funds @ 92.48 %		\$3,514,148.00
City of Mesa Funds	=	\$ 361,750.00*
Non Federal Aid Funds	+	15,157.00
Total City of Mesa Funds	=	376,907.00

* This includes a 2% surcharge on the total cost as per Chief Deputy State Engineer memo of February 2, 1982.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the Local Agency, award the contract, enter into a contract with a firm to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Standard Specifications for Road and Bridge Construction of the Highways Division, Arizona Department of Transportation. Further, the State will enter into a Project Agreement with FHWA covering the work embraced in said construction contract and will request the maximum federal funds available.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of Local Agency's deposit unless and until so authorized in writing by the Local Agency.

2. Prior to the solicitation of bids, the Local Agency shall deposit funds with the State in the amount determined by the State to be necessary to match federal funds in the ratio required. Upon completion of the construction contract, the State shall return to the Local Agency any part of the funds deposited by Local Agency remaining after Local Agency's pro rata share of the cost, as finally fixed and determined by FHWA, has been paid.

3. The Local Agency shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

4. The Local Agency shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom, prior to the start of construction.

5. The Local Agency shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the Local Agency shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the Local Agency.

6. Upon completion of construction, the Local Agency shall provide for, at its own cost and as an annual item in its budget, proper maintenance, including, but not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

7. The Local Agency shall mark and sign school crossings and railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

8. By such regulation as it may by ordinance provide, the Local Agency shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic at intersections and at such other locations as necessary.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. Local Agency assumes full responsibility for the design, plans and specifications, the engineering in connection therewith, the construction of the improvements contemplated, cost overruns, and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of Local Agency and that Local Agency hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, Local Agency, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the work covered by this agreement is to be borne by FHWA and Local Agency, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, Local Agency agrees to furnish and provide State with Local Agency funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled by the Governor in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this agreement.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518(B) and (C).

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Engineering Consultant Services
205 South 17 Avenue, Room 118E
Phoenix, AZ 85007

City Manager
City of Mesa
P.O. Box 1466
Mesa, Az. 85201

9. Attached hereto and incorporated herein by reference is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF MESA

STATE OF ARIZONA
Department of Transportation

By



Title City Manager

By

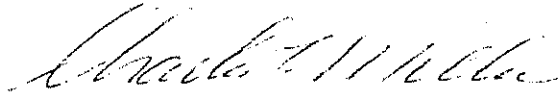


THOMAS A. BRYANT, II
State Engineer

R E S O L U T I O N

Be it resolved on this, the 10th day of January, 1989, that I, CHARLES L. MILLER, as Director, Arizona Department of Transportation, have determined that pursuant to A. R. S. 28-108, it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through its Highways Division, enter into a Intergovernmental Agreement with City of Mesa for Project M-784-4(1).

Work entails widening of an arterial street to modern major urban street standards.



CHARLES L. MILLER, Director
Arizona Department of Transportation

RESOLUTION NO. 6079

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT ON BEHALF OF THE CITY OF MESA WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Section 1: That the agreement for installing street improvements on Greenfield Road, from Brown Road to McDowell Road, between the City of Mesa and the Arizona Department of Transportation, is hereby approved.

Section 2: That the City Manager is authorized and directed on behalf of the City of Mesa to execute the agreement and the City Clerk is authorized and directed to attest to the signature of the City Manager thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 23rd day of January, 1989

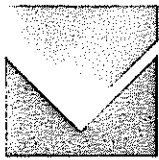
APPROVED:



Peggy Rubach
Mayor

ATTEST:

SM Eggers
City Clerk




CITY OF
MESA

DETERMINATION OF LEGAL COUNSEL

Re: Project M-784-4(1)
7844 MA MES SS 143 01C
Greenfield Road
Brown Road - McDowell Road

The above-referenced agreement has been reviewed by the undersigned attorney who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona.

DATED this 6th day of January, 1989.



Neal J. Beets
City Attorney
City of Mesa



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. Kr-88-2902-trd, is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 10th day of February, 1989.

ROBERT K. CORBIN
Attorney General

James R. Redpate
Assistant Attorney General
Transportation Division